

MIKIHIRO et al., SN 09/937,842  
15 November 2005 Amendment  
Reply to 15 June 2005 OA

Dkt. 983.40662X00/PO-65US-0803  
Page 9

### REMARKS

This Amendment is responsive to the Office Action identified above, and is further responsive in any other manner indicated below.

### EXAMINER INTERVIEW ACKNOWLEDGED/STATEMENT OF SUBSTANCE

This paper is responsive to the examiner interview conducted 20 October 2005, by and between the Supervisory Primary Examiner (SPE) Eleni Mantis Mercader, assigned Examiner Baisakhi Roy and attorney Paul J. Skwierawski, in the present application. More particularly, any foregoing amendments includes amendments discussed during, or resultant from, the examiner interview, and the following includes a reiteration of discussions/arguments had during the examiner interview.

### PENDING CLAIMS

Claims 1, 3-13 and 17-30 were pending in the application, under consideration and subject to examination at the time of the Office Action. Unrelated to any prior art, scope or rejection, appropriate claims have been amended, added or deleted (without prejudice or disclaimer of any scope or subject matter) in order to adjust a clarity and/or focus of Applicant's claimed invention. That is, the amendments to the claims are unrelated to any prior art or scope adjustment, and are simply clarified claims in which Applicant is presently interested. At entry of this paper, Claims 1, 3-6, 8-13, 17-18, 28-34 will be pending for further consideration and examination in the application.

MIKIHIRO et al., SN 09/937,842  
15 November 2005 Amendment  
Reply to 15 June 2005 OA

Dkt. 983.40662X00/PO-65US-0803  
Page 10

### REJECTION UNDER 35 USC '103

All 35 USC '103 rejections are respectfully traversed. However, such rejections have been rendered obsolete by the present clarifying amendments to Applicant's claims, and accordingly, traversal arguments are not appropriate at this time. However, Applicant respectfully submits the following to preclude renewal of any such rejections against Applicant's clarified claims.

All descriptions of Applicant's disclosed and claimed invention, and all descriptions and rebuttal arguments regarding the applied prior art, as previously submitted by Applicant in any form, are repeated and incorporated hereat by reference. Further, all Office Action statements regarding the prior art rejections are respectfully traversed. As additional arguments, Applicant respectfully submits the following.

Unrelated to any prior art rejection, several claims have now been canceled without prejudice or disclaimer (in favor of presenting such claims in a separate continuation application), thus rendering any rejection of such claim(s) obsolete at this time. Patentability of remaining ones of the rejected claims are supported as follows.

During the above-mentioned examiner interview, agreement was reached that the claims as presently amended, would not support the prior 103 rejections based upon the applied references. More particularly, Applicant's present focus is on the FIGs. 6(a)-6(c), 7(a)-7(c), 40, 41, 42(a) and 42(b) embodiments having an access opening provided along one side of the probe holders, i.e., note that the example

MIKIHIRO et al., SN 09/937,842  
15 November 2005 Amendment  
Reply to 15 June 2005 OA

Dkt. 983.40662X00/PO-65US-0803  
Page 11

embodiment has a "C" cross-sectional shape. Such an access opening allows access to a central hollowed area of the probe holder's generally hollowed shape, and has been found to be very advantageous in terms of adjusting/clearing individual probes.

For example, FIG. 6(a) illustrates an array of probe holders. To understand the advantage, assume that probes are inserted into each of the eight probe holders and the entire array is applied against a person's scalp, and that one of the probes encounters unacceptable contact due to intervention of the person's hair between the probe and the person's skin. If the probe holders were to be provided as solid, the entire array would have to be moved (e.g., removed/re-applied) in an attempt to improve contact of the probe. Such may or may not improve, and may even degrade, contact of other ones of the probes, i.e., it is a hit-or-miss operation. In contrast, with a probe holder having Applicant's access openings, a technician could simply reach through the opening of the affected probe holder to clear the probe (without disturbing the array or other probes).

In terms of claim language, Applicant's clarified independent Claim 1, for example, recites (in part), "wherein the measurement probe is provided with a plurality of optical fiber fixing members insertable through a plurality of access entries, which fix ones of the optical fibers in a predetermined interval and a support member which supports the optical fiber fixing members, and where at least one optical fiber fixing member of the plurality of optical fiber fixing members is a hollow holder having a hair displacement access cut out portion which is different than the access entries, extending along a side thereof for at least a

MIKIHIRO *et al.*, SN 09/937,842  
15 November 2005 Amendment  
Reply to 15 June 2005 OA

Dkt. 983.40662X00/PO-65US-0803  
Page 12

partial longitudinal length thereof, for displacing portions of hair of the subject outside of a hollow area of the hollow holder." Other ones of Applicant's clarified claims have similar or analogous limitations.

Regarding the previously applied references, it was noted during the examiner interview that none of the applied references concerned displacing hair out of a holder for improving optical fiber transmission/reception into/out-of a subject's body. In fact, at minimum, the primary Yamashita *et al.* and Fletcher *et al.* references do not even mention "hair".

As a result of all of the foregoing, it is respectfully submitted that the applied art (taken alone and in the Office Action combinations) would not support a '103 obviousness-type rejection of Applicant's claims. Accordingly, reconsideration and withdrawal of such '103 rejection, and express written allowance of all of the '103 rejected claims, are respectfully requested.

#### RESERVATION OF RIGHTS

It is respectfully submitted that any and all claim amendments and/or cancellations submitted within this paper and throughout prosecution of the present application are without prejudice or disclaimer of any scope or subject matter. Further, Applicant respectfully reserves all rights to file subsequent related application(s) (including reissue applications) directed to any/all previously claimed limitations/features which have been subsequently amended or cancelled, or to any/all limitations/features not yet claimed, *i.e.*, Applicant continues (indefinitely) to

MIKIHIRO et al., SN 09/937,842  
15 November 2005 Amendment  
Reply to 15 June 2005 OA

Dkt. 983.40662X00/PO-65US-0803  
Page 13

maintain no intention or desire to dedicate or surrender any limitations/features of  
subject matter of the present application to the public.

#### **EXAMINER INVITED TO TELEPHONE**

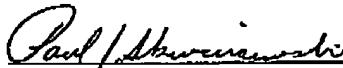
The Examiner is invited to telephone the undersigned at the local D.C. area  
number 703-312-6600, to discuss an Examiner's Amendment or other suggested  
action for accelerating prosecution and moving the present application to allowance.

#### **CONCLUSION**

In view of the foregoing amendments and remarks, Applicant respectfully  
submits that the claims listed above as presently being under consideration in the  
application are in condition for allowance. Accordingly, early allowance of such  
claims is respectfully requested.

To whatever other extent is actually necessary, Applicant respectfully petitions  
the Commissioner for an extension of time under 37 CFR §1.136. Please charge  
any actual deficiency in the required fee to ATS&K Deposit Account No. 01-2135 (as  
Case No. 983.40662X00).

Respectfully submitted,



Paul J. Skwierawski  
Registration No. 32,173  
ANTONELLI, TERRY, STOUT & KRAUS, LLP  
1300 North Seventeenth Street, Suite 1800  
Arlington, Virginia 22209-3873, USA  
Telephone 703-312-6600  
Facsimile 703-312-6666